



Geoducks

RCW 79.96.080: Geoduck harvesting-Agreements, regulation.

(1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into an agreement with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the agreement by the harvester, the harvester shall be reimbursed by the department of natural resources for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.):

PROVIDED, That for the purposes of this section and RCW 75.24.100 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such entity until compliance with this subsection is secured.

RCW 79.96.085: Geoduck harvesting--Designation of aquatic lands.

The department of natural resources shall designate the areas of aquatic lands owned by the state that are available for geoduck harvesting by licensed geoduck harvesters in accordance with chapter 79.90 RCW.

RCW 75.24.100: Geoduck clams, commercial harvesting--Unauthorized acts--Gear requirements.

[In this RCW, "department" refers to the Department of Fish and Wildlife.]

(1) The department may not authorize a person to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.96.080. The department may not authorize commercial harvest of geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0. ft.), or that lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the commission shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The commission may require modification of the gear or stop its use if

it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

RCW 75.30.280: Geoduck fishery license--Conditions and limitations--OSHA regulations--Violations.

[In this RCW, "department" refers to the Department of Fish and Wildlife.]

(1) A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 75.24.100. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The department shall not suspend or revoke a geoduck fishery license if the

violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the department shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured.

Discussion on geoducks

Geoducks are one of the most valuable aquatic resources owned by the people of Washington. Almost all geoducks harvested commercially come from state-owned aquatic lands. The revenue generated by the sale of geoducks pays for managing and protecting state aquatic resources and helps pay for public aquatic-related projects through grants from the Aquatic Lands Enhancement Account. SEE ALSO: Aquatic Lands Enhancement Account.

The geoduck program is primarily operated by the Division. Region staff should be aware of how the program works, however, so they may respond to public questions and concerns and so that they remember to consider the effects of land-management decisions on geoducks.

Geoduck harvesting is not considered aquaculture. SEE ALSO: Aquaculture.

Commercial harvesting of geoducks began in 1970. Initially, there was little demand for geoducks, and there was limited monitoring of commercial harvest activity. As the industry found a market for the geoducks in Asian countries, the prices increased but state supervision was still limited. Eventually, widespread poaching and under-reporting of harvests were discovered, which led to increased monitoring. As a result, the department greatly increased the oversight of geoduck sales and harvesting.

The goals for management of the state's geoduck program include:

- Protecting the geoduck resource and the marine environment.
- Encouraging a stable fishery.
- Maximizing benefits to the citizens of the state.
- Avoiding adverse impacts to shoreline areas.
- Using effective enforcement.

Cooperation with other agencies, the tribes and the public are critical to the department's geoduck activities. The department works closely with the Washington State Department of Fish and Wildlife (WDFW) to manage the geoduck resource. Before leasing any tracts for harvest, both agencies work together to solicit comments from other agencies and from the public, coordinate activities with other agencies, and provide environmental assessment and review.

As part of an extensive public contact program, the department meets with numerous interested parties to review the proposed harvest tracts and address any environmental or use conflicts prior to auctioning any geoduck harvest tracts. Interested parties include local officials, federal or state agencies, commanders of nearby military installations, and tribes with regulatory, proprietary, or operational interests in or near the proposed harvest areas.

Once the beds are surveyed and evaluated, environmental summaries of the tracts are distributed to the interested parties. The department, sometimes in conjunction with WDFW, then holds a public meeting near the proposed harvest to:

- Explain the fishery.
- Review the status of the geoduck resource.
- Describe the harvest operation and potential environmental impacts.
- Explain what residents may expect during the harvest.

- Allow the public the opportunity to voice their concerns about the harvest and suggest actions for minimizing adverse impacts.

GEODUCKS: BED HEALTH CERTIFICATION

Discussion on geoducks: bed health certification

Geoduck beds must be certified as meeting state and national sanitary requirements by the Washington Department of Health before they can be harvested.

It is the policy of the Office of Shellfish Programs at the Department of Health that all commercial shellfish areas be classified as to their suitability for shellfish harvesting on the basis of sanitary quality and public health safety in accordance with the National Shellfish Sanitation Program (NSSP). This classification policy is intended to ensure that shellfish areas approved for direct harvest are not subject to contamination from human or animal fecal matter, or poisonous or deleterious substances in amounts that may present an actual or potential hazard to public health.

The NSSP criteria for classifying a shellfish area consists of a shoreline survey, an evaluation of the area's physical characteristics, and a water quality evaluation.

The shoreline survey determines if there are any actual or potential pollution sources capable of affecting the shellfish area. Point and non-point pollution sources are identified and their proximity to the growing area is determined. The shoreline survey also determines if there are sporadic, seasonal or periodic pollution events and whether these events are sufficient to require a "Conditionally Approved,"

"Restricted" or "Prohibited" classification for all or some portion of the proposed area.

Evaluating the physical characteristics of a shellfish area involves determining the effects that weather, surface waters, and geographic factors have on the transport, distribution, and dilution of pollutants. A water quality evaluation of the shellfish area examines the results of collected water samples to determine any actual or potential pollution sources and conditions.

The Department of Health may close shellfish beds that do not meet sanitation standards.

GEODUCKS: ENVIRONMENTAL IMPACTS

Discussion on geoducks: environmental impacts

The department and WDFW have concluded that there are no significant long-term adverse impacts from geoduck harvest on the marine environment when the harvest is conducted as prescribed in The Puget Sound Commercial Geoduck Fishery Management Plan and Environmental Impact Statement (May, 1985). The division is currently preparing an updated management plan and environmental impact statement.

The major concerns expressed about geoduck harvest come from residents living near harvest sites, including noise and commotion during harvest, interference with other uses of the water (primarily recreational boating and visual use), trespass by harvesters on private tidelands, and possible reductions in intertidal geoduck stocks.

GEODUCKS: HARVESTING

Discussion on geoducks: harvesting

Commercial geoduck harvest occurs in an area starting at a water depth of 18 feet or a line 200 yards seaward from and parallel to the line of ordinary high tide, whichever is farthest from shore. The outer edge of the harvest area is at a depth of 70 feet. The inner harvest boundary minimizes harvest impacts to sensitive nearshore habitats, such as eelgrass beds, and to uses of the uplands. The outer boundary is the limit at which divers can effectively operate without extensive decompression.

The sustainable harvest is set annually by the department in consultation with the Washington Department of Fish and Wildlife (WDFW). The sustainable harvest level sets the percentage of the total geoduck resource that can be harvested on a regular basis without depleting the resource. In 1998, it was determined that 2.7 percent of the total geoducks could be harvested without significant impact to the total resource. This percentage is divided equally between state and tribal fisheries.

To determine how many geoducks can be harvested from a particular tract, the department completes preliminary dives and maps the bed sites. WDFW conducts transects, which are lines 150 feet long by 6 feet wide, counts the geoducks in these transects and estimates how many are present in the bed. From that estimate they can determine how many pounds of geoducks can be harvested from a given bed.

Geoducks are slow to recruit, which means that it takes a long time to replace the geoducks taken by harvest. Once a bed is fully harvested, it must be left to recover for an extended period of time, usually 20-30 years.

The department, working with WDFW, strives to meet the following criteria when selecting geoduck beds for harvest:

- Find beds that provide sufficient stocks to meet the optimum sustainable yield.
- Rotate the harvest around Puget Sound to minimize the impacts of the fishery on the environment and shoreline communities, for ease of enforcement, and for the convenience of the industry.
- Cluster the harvest tracts, when possible, to concentrate the fishing activities in a single, discrete area to facilitate enforcement.
- Offer a variety of geoduck types and qualities during each contract period to meet current market demands.
- Where possible, locate shore landing areas to minimize interference with public use and to offer convenience for enforcement and the industry.

The department selects beds to be harvested from those designated as harvestable by WDFW. The agencies work closely to select beds to supply optimum yields of the type of product required by the markets.

Geoducks are graded according to color and size, using an informal grading system. The color of the geoduck depends on the composition of the substrate. For example, geoducks tend to be brown or black when iron is present. Different markets prefer different colors and sizes, but the quality or taste is not affected. Generally, though, large geoducks with light-colored meat are considered the most desirable.

The department schedules and supervises an on-site test harvest with interested bidders before it auctions rights to harvest. The test harvest provides independent confirmation to the potential bidders of the quality and quantity of geoducks in the harvest area. The test harvests last one day per bed and each potential bidder can remove less than 500 pounds of geoducks, which must be paid for at the time of the test.

The department and WDFW work cooperatively to monitor the harvest of the state's portion of the geoduck harvest. A compliance boat monitors activities at the site to make sure that commercial geoduck harvest vessels comply with noise, safety, and operating requirements. All geoducks harvested under state contracts are weighed on the water each day. Divers check the condition of the geoduck beds several times a week to look for problems such as improper harvesting methods, waste, and illegal removal of geoducks. This monitoring is designed to protect the geoduck resource and minimize any inconvenience or disruption to neighboring landowners.

As part of harvest enforcement, the department ensures that:

- A compliance boat monitors activities at the harvest site.
- Commercial geoduck harvest vessels comply with noise, safety, and operating requirements.
- All geoducks harvested under state contracts are weighed on the water each day.
- Divers check the condition of the geoduck beds several times a week to look for improper harvesting methods, waste, illegal removal of geoducks, or other problems.

Responsibility for monitoring and compliance of the geoduck harvest program lies with the division. Each year a specific area of state-owned bedlands are identified for harvest of geoducks. Any harvest outside of these boundaries, unless by tribal entities, is illegal and should be immediately reported to the Division and the Washington Department of Fish and Wildlife.

People wishing to harvest geoducks on state-owned aquatic lands for recreation or personal consumption can obtain a personal use shellfish license from WDFW. They are required to observe the limits set by WDFW and are allowed to use only hand-digging methods.

GEODUCKS: OPERATIONS

Discussion on geoducks: operations

As a precondition to confirmation as a responsible bidder, the geoduck purchaser must have a Plan of Operation form approved by the department, which includes the following information:

- Source and identity of divers, vessel operators, tenders, packers, shippers, harvest vessels and other harvest equipment.
- Legal relationship between the purchaser, divers, vessel operators and tenders.
- The identity of any other subcontractors the purchaser will use.
- Location and moorage site of the vessels.
- Steps the purchaser will take to ensure compliance with the contract.

The purchaser also agrees to cooperate fully with any employee of the department, the Department of Fish and Wildlife, the Department of Health, the Washington Industrial Safety and Health Administration (WISHA) and Office of Safety and Health Administration (OSHA).

GEODUCKS: TRIBAL RELATIONS

Discussion on geoducks: tribal relations

The management of shellfish in the state of Washington, including geoducks, is subject to treaties with the various tribes. In 1995, Federal Court Judge Rafeedie issued a ruling declaring that geoduck and shellfish are "fish" and thus the

tribes have treaty rights to share these resources with all citizens of the state. This means that up to fifty percent of the resources allowed to be harvested in any given year can be harvested by the tribes. The department works cooperatively with the tribes to set geoduck harvests.

This sharing of the geoduck resource requires, for example, that if the sustainable harvest is set at 2.7 percent of the total weight of geoducks in harvestable beds (as it was in 1998), the state and the tribes are each entitled to harvest 1.35 percent.

The geoduck fishery and its management are described in annual management agreements and harvest plans negotiated and signed by the state and tribes. Separate management agreements and harvest plans are written for each of the six management regions. Each tribe may fish in its usual and accustomed area as determined through intertribal agreements.

These management agreements specify:

- The catch areas open for harvest.
- The type of fishery to be opened (commercial or non-commercial).
- The species to be taken, including an estimate of, or upper limit on, the amount to be taken.
- The gear to be allowed.
- Provisions for record keeping and harvest reporting, including a schedule to ensure a timely exchange of information.
- Any other information necessary for a specific fishery.

If the department and the involved tribe cannot come to a resolution in the Tribal Management Agreement, or if either is reluctant to sign, the fishery may be opened by a procedure set forth in the Rafeedie Decision called "Opening a Fishery Without Agreement." In these cases:

- The state and all affected tribes confer at least one time in an effort to reach agreement regarding the proposed fishery.
- Failing agreement, the tribes or state proposing to open the fishery provide a proposed regulation for the fishery, in writing, at least 14 days before the fishery is scheduled to begin.
- The party proposing the harvest provides a sound fisheries management basis for determining that a harvestable surplus exists and that a fishery can be operated that will not interfere with the sharing principles ordered by the court.

Tribes monitor their own harvests, and are required to follow Department of Health regulations as well as regulations that protect eelgrass, herring and salmon. The department is not mandated to monitor tribal geoduck harvests, though the department can conduct an investigation if it is believed violations have occurred.

Gravel

SEE: Sand and gravel.

Growth Management Act

Discussion on Growth Management Act

The state Growth Management Act (GMA) requires certain cities and counties that meet population or growth criteria to plan for future growth while protecting natural resources. Other cities and counties may, at their option, participate in planning under the act. Under GMA, all jurisdictions must classify and designate natural resource lands (e.g., forest, agricultural) and critical areas (e.g., wetlands, fish and

wildlife habitat, steep slopes). These jurisdictions must also adopt development regulations such as zoning and other land use controls, and comprehensive plans.

Regarding growth management issues, department staff should:

- Read and be familiar with all local comprehensive plans and zoning codes that pertain to state-owned aquatic lands in their assigned area.
- Be aware of proposed amendments to local comprehensive plans and zoning codes.
- Work with local planning agencies to determine if such amendments will affect state-owned aquatic lands. Consider if proposed changes will, for example, alter uses of uplands adjacent to state-owned aquatic lands or will result in greater impacts to state-owned aquatic lands due to greater density or newly permitted uses.
- Notify the Region growth management coordinator and the Division of upcoming proposed amendments and opportunities to comment on them.

SEE ALSO: Shoreline Management Act; Aquatic land use planning.